



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

June 20, 1967

Dr. George J. Beto
Director
Texas Department of Corrections
Huntsville, Texas

Opinion No. M-97

Re: Whether the Department of
Corrections may legally
require the return of
Robert Samuel Frank to
serve the remainder of
his sentence.

Dear Dr. Beto:

You have requested an opinion of this office on the following facts:

Inmate Robert Samuel Frank, T.D.C. #126098, whose parole was revoked on September 16, 1963, under Proclamation No. 63-3379, is currently being held by authorities in the State of New Jersey, and is refusing extradition to Texas on the grounds that he does not owe this State any remaining time on his original conviction.

The Inmate was originally received in the Texas Department of Corrections from Potter County on May 2, 1953, to serve a 10-year sentence for the offense of robbery. Sentence to begin on December 2, 1952. After having been credited with 5 years, 7 months and 22 days on his original sentence, the Inmate, on June 7, 1956, was granted an out-of-state conditional pardon to the State of New Jersey by Proclamation No. 56-0860.

By Proclamation No. 58-0210, dated February 7, 1958, the Governor revoked Proclamation No. 56-0860 for violation of the conditions of parole.

By Proclamation No. 61-3720, dated November 9, 1961, the Governor granted another conditional pardon to New Jersey "with no credit for time served on prior conditional pardon," (Emphasis supplied).

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Proclamation No. 62-1115, dated April 16, 1962, revoked the conditional pardon granted by Proclamation No. 61-3720, holding same to be null and void and of no force and effect.

By Proclamation No. 62-3776, dated November 16, 1962, the Governor reinstated the conditional pardon to New Jersey, granted him on November 9, 1961, under Proclamation No. 61-3720, which was revoked on April 16, 1962, under Proclamation No. 62-1115, and set aside said revocation.

By Proclamation No. 63-3379, dated September 13, 1963, the Governor revoked Proclamation No. 61-3720 and ordered the Inmate be taken into custody and delivered to the authorities of the Texas Department of Corrections to serve the remainder of his sentence.

By the terms of Proclamation No. 61-3720, dated November 9, 1961, Robert Samuel Frank was denied credit for time served on prior conditional pardon dated June 7, 1956 (No. 56-0860). On June 7, 1956, when he was granted his first out-of-state conditional pardon, he had been credited with 5 years, 7 months and 22 days on his original sentence. Under the terms of Proclamation No. 61-3720, he was not credited for the time served from June 7, 1956 to November 9, 1961, a total of 5 years, 5 months and 2 days. Although the Proclamation No. 62-1115 revoked Proclamation No. 61-3720 and held same to be null and void, nevertheless, Proclamation No. 62-3776 reinstated Proclamation No. 61-3720 fully, thereby denying the Inmate credit for time served on parole between June 7, 1956 and November 9, 1961.

The Governor has the right to issue conditional pardons and extending them on such conditions as deemed by him to be advisable, and when such clemency is accepted by the prisoner, he becomes bound by such conditions, and upon determination by the Governor that the prisoner has failed to fulfill the conditions of the clemency proclamation, the Governor is authorized to revoke such clemency, and the prisoner is not entitled to credit on his sentence for the time he is at large. Ex Parte Bryant, 230 S.W.2d 824 (Tex. Crim. 1950).

Each of the proclamations of the Governor granting a conditional pardon were conditioned as follows:

" . . . If, however, he is guilty at any time of any misconduct or violation of the law or fails to comply in any way with the terms hereof or for any other reason the Governor may deem sufficient (including any facts not known to the Governor at the time of this clemency) this pardon shall be and is subject to revocation at the Governor's discretion, with or without hearing, as the Governor may determine, and upon revocation by the Governor of this pardon, the same shall become and be null and void and of no force and effect, and the Subject shall be, by order of the Governor, returned to and confined in the Penitentiary to serve the sentence originally imposed upon him or so much thereof as had not been served by the Subject at the time of his release under the terms of this or any previous clemency and the time during which the Subject is at large under this or any previous clemency shall not be considered or credited to the Subject as time served on his original sentence."

Also, each proclamation of the Governor, revoking the conditional pardon recited that he would receive no credit on his sentence for the time he was at large under the conditional pardon.

Under the facts presented, it is the opinion of this office that Robert Samuel Frank must serve the remaining 4 years, 4 months and 8 days on his original conviction.

The authorities attached to your letter, touching the right to revoke probation during the probationary period, have no application and are not controlling where the probationary period has not terminated.

The Court of Criminal Appeals in Ex Parte Cochran, 253 S.W.2d 443 (1952), held that where a reprieve granted relator provided that, upon violation of stated conditions, time out of prison did not count as time served on a 25-year sentence, and thereafter a pardon was granted upon conditions of relator's previous clemency, the pardon was but a renewal of the original contract by the relator and

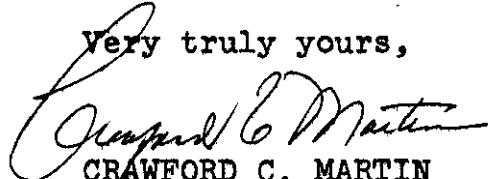
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the Governor and, therefore, time during which relator was at large before the pardon was revoked would not be credited to time served on the sentence upon violation of the conditions of parole.

S U M M A R Y

Under the facts stated, the Governor's revocation in Proclamation No. 63-3379 is valid as the probationary period had not terminated, and the Department of Corrections may legally require the return of Robert Samuel Frank to serve the remainder of his sentence.

Very truly yours,


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Attorney General of Texas

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GJP/dt

APPROVED:

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